No. 78-1484

In the Supreme Court of the United States

OCTOBER TERM, 1978

RUBY COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 21-39) is reported at 588 F. 2d 697. The opinion of the district court (Pet. App. 45-54) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 8, 1978. A petition for rehearing and rehearing *en banc* was denied on December 29, 1978 (Pet. App. 40). The petition for a writ of certiorari was filed on March 27, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the United States should be estopped from asserting title to certain lands located along the Snake River in Idaho.

STATEMENT

This case involves the title to 108.36 acres of land in Bingham County, Idaho, lying between the meander line of Lot 3, Section 33, Township 2 South, Range 35 East, Boise Meridian, and the actual river bank of the Snake River.

On October 23, 1876, the United States contracted with John B. David to conduct an official survey of two townships in eastern Idaho which included the lands in question. As part of his task, David was required to determine the location of rivers such as the Snake River and to indicate their location by establishing meander lines.[1] David surveyed the area in question in March and April of 1877. The official plat of the David survey was approved and certified by the Surveyor General's Office at Boise, Idaho, in August 1877 (Pet. App. 48-49).

On June 29, 1891, the United States issued a patent to Lot 3, which contained 38.47 acres, to Rosenhannah Forbes. According to the official survey plat, the east boundary of the lot was the meander line of the Snake River. The petitioners, who are successors in interest to Forbes, claim the land between the meander line and the actual river—an additional 108.36 acres—under this

[1]A surveyor's "meander line" is not meant as a boundary but primarily as an aid in calculating the size of a tract by showing the location of the river. Normally, a federal patent conveys title extending to the actual riverbank, not merely to the meander line. But the rule is different where, as here, the meander line is misplaced by fraud or gross error; in that case the patent conveys only to the meander line, and the lands lying between it and the river remain the property of the United States (see Pet. App. 23 & n.2).

patent (Pet. App. 49). They and their predecessors have occupied the land since 1891 and have made improvements on it (*ibid.*).

In 1922, the Bureau of Land Management (BLM) conducted an investigation and concluded that the meander lines of the Snake River as shown by the 1877 David survey were erroneous and fraudulent. In 1923, the General Land Office of the Department of the Interior disapproved recommendation that the river be resurveyed (*id.* at 50).[2]

In 1957, the BLM ordered a survey of the lands bordering the Snake River and lying within the meander lines of the David survey. On the basis of this new survey, the BLM concluded that the meander lines of the 1877 David survey were grossly erroneous and fictitious. In particular, the BLM determined that there existed 108.36 acres located between the fictitious meander line bordering Lot 3 and the actual bank of the Snake River. These omitted lands were surveyed and descrived as Lots 12, 13, 14, and 15, Section 33,

[2]This determination was based in part on apparent doubt by the General Land Office that the original survey was fraudulent and on its view that, even if fraud were proven, the value of the land involved would not be worth the expense of a resurvey. The General Land Office also recognized that practically all the lands had passed into apparent private ownership and that the owners of the land on both sides of the river were claiming to the banks of the river (Pet. App. 50). The General Land Office decided, therefore, not to resurvey "at this time" and reserved the right to do so in the future (*id.* at 31).

Township 2 South, Range 35 East, Boise Meridian.[3] The 1957 survey was officially approved by the BLM in 1960 (Pet. App. 50-51).

On May 31, 1962, Congress passed the act of March 31, 1962, Pub. L. No. 87-469, Section 2, 76 Stat. 89, which authorized the Secretary of the Interior, subject to certain qualifications, to sell omitted public lands along the Snake River for not less than their fair market value. The occupants to these omitted lands were given a preference right to purchase the lands at their fair market value, which does not include the value attributable to improvements made by the occupants or their predecessors in interest.

On March 20, 1965, the United States filed an action in the United States District Court for the District of Idaho to quiet title to the 108.36 acres in question. The petitioners here, defendants in the district court, counterclaimed and sought to quiet title in themselves.

The district court found that the 1877 David survey was grossly erroneous (Pet. App. 52), that the lands in question were omitted public lands (*id.* at 54), and that the United States could not be estopped from asserting its title to the lands (*id.* at 53-54). Accordingly, the district court quieted title to the lands in favor of the United States (*id.* at 54).

The court of appeals affirmed. The court of appeals concluded that the district court's finding that the 1877 David survey was "grossly erroneous" was correct (*id.* at 25 & n.5). Although the court of appeals disagreed

[3]Although this case involves 108.36 acres, trial testimony indicated that a total of 14,000 to 16,000 acres may have been omitted from the David survey (Pet. App. 22 & n.1).

with the district court's ruling that the doctrine of equitable estoppel cannot apply against the United States (Pet. App. 26), it held that the required showing of "affirmative misconduct" on the part of the government had not been made. Judge Ely dissented (*id.* at 35-39).

ARGUMENT

The decision of the court of appeals is correct, does not conflict with any decision of this Court or any other courts of appeals, and does not warrant review.

1. Where lands are patented according to an official plat and the plat shows the parcel bounded by a meander line along a body of water, the boundary of the parcel is ordinarily the actual water line, not the meander line. *Producers Oil Co.* v. *Hanzen*, 238 U.S. 325, 339 (1915); *Horne* v. *Smith*, 159 U.S. 40, 42 (1895); *Railroad Co.* v. *Schurmeir*, 74 U.S. (7 Wall.) 272, 286-287 (1868). A well-established exception to this general rule applies when the position of the meander line, as indicated by the surveyor, is severely misplaced as a result of fraud or gross error. Then, the meander line becomes the strict boundary of the parcel, and the United States retains title to the omitted public lands lying between the meander line and the actual body of water. *Jeems Bayou Fishing & Hunting Club* v. *United States*, 260 U.S. 561, 564 (1923); *Lee Wilson & Co.* v. *United States*, 245 U.S. 24, 29 (1917); *Security Land and Exploration Co.* v. *Burns*, 193 U.S. 167, 180-183 (1904).

Although petitioners contended in the court of appeals that the 1877 David survey was not grossly erroneous and that the lands in question were not omitted lands, they do not raise those issues before

this Court. Thus, it is undisputed that the United States held title to the land between the meander line and the river until at least 1923.

2. Petitioners do contend that the United States is estopped from asserting its title to the omitted lands. This is so, they say, because the General Land Office determined in 1923 not to resurvey the area in question following the BLM's investigation.

Petitioners' argument is answered by a long line of this Court's decisions holding that, at least in the absence of "affirmative misconduct," the United States cannot be estopped from asserting its rights by the unauthorized acts or inaction of its agents. *United States* v. *California*, 332 U.S. 19, 39-40 (1947); *Federal Crop Ins. Corp.* v. *Merrill*, 332 U.S. 380, 384 (1947); *Jeems Bayou Fishing & Hunting Club* v. *United States, supra,* 260 U.S. at 564; *Lee Wilson & Co.* v. *United States, supra,* 245 U.S. at 31; *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 409 (1917).

Specifically, this case is controlled by *Jeems Bayou Fishing & Hunting Club* v. *United States, supra*, in which the United States brought suit to quiet title to certain lands lying between the fictitious boundary of a patented parcel and the actual shoreline of a lake. The Court first held that the patent extended only to the meander line and not to the water's edge. The Court then held, in response to an estoppel claim (260 U.S. at 564):

> But it is asserted that plaintiff is estopped from claiming title to the land because of certain correspondence with the Commissioner of the General Land Office, in 1897, wherein that officer said that there were no unsurveyed lands in the locality in question and because of an official

> letter from the Director of the Geological Survey to the same effect. It is clear, however, that the United States cannot be so estopped. *Lee Wilson & Co.* v. *United States, supra; Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 408.

The doctrine rejecting allegations that the United States is estopped from protecting its interests in public property was further explained by this Court in *United States* v. *California, supra*, 332 U.S. at 40:

> The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act. [Footnote omitted.]

Petitioners suggest (Pet. 12-16) that decisions such as *Jeems Bayou* were modified by *INS* v. *Hibi*, 414 U.S. 5 (1973). The Court held there that the government was not estopped to deny citizenship to persons who failed to apply within the statutory deadline because it had failed to advise them of the deadline. The Court based this holding on the traditional rule that estoppel is no defense to a suit to enforce a public right. *Id.* at 8. The Court dismissed Hibi's argument that the government was guilty of "affirmative misconduct" with the observation that no such conduct had been shown. *Id.* at 8-9. The Court did not decide whether "affirmative misconduct" might create an estoppel.

Thus, *Hibi* does not stand for the propositon that the United States can be estopped from asserting its title to the public lands.[4]

But even if "affirmative misconduct" could create an estoppel against the government in such a case, the court of appeals properly determined that no misconduct had taken place here. As explained in the majority opinion of the court of appeals, the government officials involved in 1923 "candidly and forthrightly" announced their reasons for their decision not to conduct a resurvey at that time, and expressly reserved the right to assert the government's title in the future (Pet. App. 31):

> In its disapproval of the Surveyor General's recommendation to resurvey, the Interior Department clearly announced the nature and basis of its decision. First, the Department stated that one reason for the disapproval was that "the investigation survey [did not] support, beyond question . . . that the original survey was fraudulent." Second, the Department stated that it did "not think that there is justification for raising a question as to riparian rights at this time." Finally, Interior stated that the investigation survey was to be filed in the office of the Surveyor General of Idaho "until such time as circumstances should develop the necessity for its revival."

[4]Petitioners also rely (Pet. 9) on *Moser* v. *United States*, 341 U.S. 41 (1951). However, that case did not involve the doctrine of estoppel. The Court expressly stated that it was not reaching any estoppel question and merely held that the petitioner there had not knowingly and willingly waived his right to citizenship. 341 U.S. at 47.

See also Pet. App. at 31-32.

Moreover, even under the most liberal view of equitable estoppel (see Pet. 10), petitioners must prove that the government advised them (or their predecessors) that it would not assert—at any time—its right to the public lands and that petitioners (or their predecessors) relied on their advice. Petitioners have made no such showing on either point. To the contrary, petitioners claim they were "ignorant of the errors in the David survey" (Pet. 17). Since petitioners do not claim that the government in 1923 misrepresented its actual policy of preserving its claim for future assertion, or that they relied to their detriment on any such statement, petitioners' contention amounts to nothing more than a claim of adverse possession. It is firmly established, however, that public lands may not be acquired by adverse possession. *Texas* v. *Louisiana*, 410 U.S. 702, 714 (1973); *United States* v. *California*, 332 U.S. 19, 39-40 (1947).

3. As petitioners point out (Pet. 5-11), there is some disagreement among the circuits as to whether, and under what circumstances, estoppel may be invoked against the government. The Ninth Circuit has gone the farthest in holding that the government may be estopped by the actions of its agents.[5] Even so, the

[5]For example, in *United States* v. *Wharton*, 514 F. 2d 406 (1975), the Ninth Circuit held that the United States could be estopped from asserting its title to certain public lands because of the misrepresentations of its agents.

Ninth Circuit ruled against petitioners in this case. Petitioners point to no decision which would require a result different from that reached below. Thus, this case presents no occasion to consider any conflict among the circuits.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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